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Supreme Court, U.S.
FILED
SEP 14 1994
OFFICE OF THE CLERK

No. 94-0353

In The
# Supreme Court Of The United States
October Term, 1993

RONA V. FINIZIE,
*Petitioner*

v.

CITY OF BRIDGEPORT,
*Respondent.*

PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE
STATE OF CONNECTICUT

## RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## PARTIES TO THE PROCEEDING

City of Bridgeport

Rona V. Finizie

Household Finance Corp.

Estate of Ann D. Finizie

Lyonel T. Finizie

Edmond J. Finizie

Superior Fuel Co.

Louise N. Hill

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## CITATION OF JUDGMENT DELIVERED IN THE COURTS BELOW

*City of Bridgeport v. Finizie*, 228 Conn. 925 (1994)

## STATEMENT OF CASE

Two foreclosures were commenced in 1984 by the plaintiff respondent, City of Bridgeport, against the defendant petitioner, Rona Finizie, and others as to contiguous properties at 2428 and 2440 North Avenue, Bridgeport, Connecticut for unpaid taxes. The defendant contested these matters, and a Stipulated Judgment in each matter was finally made, in open court, with the defendant accompanied by her counsel, Benson Snaider, on March 25, 1987. (Copy of transcript excerpt setting forth stipulated judgment, including inquiry made by the court to the defendant, is attached in Appendix). A sale date was established of March 26, 1988. Shortly before that date, the defendant moved to open each judgment to extend the sale date, which was granted on March 15, 1988, over the plaintiff's objection, with a new sale date of May 21, 1988. The defendant stayed these sales by filing a Chapter 13 bankruptcy petition on May 20, 1988. Her Chapter 13 plan was confirmed on December 28, 1988 providing for a sale of her real estate by December 31, 1989 to pay the plaintiff. No such sale occurred, and the bankruptcy case was dismissed on motion of the plaintiff by the Bankruptcy Court on September 2, 1992.

The plaintiff thereafter filed a Motion to Reopen as to each parcel to set a new foreclosure sale date only and enter judgment thereon. The defendant objected and filed a Motion to Amend dated November 25, 1992 to add numerous special defenses challenging the validity of the plaintiff's claims. A hearing on this Motion was held on January 4, 1993 and attended by the defendant and her counsel. No testimony was offered by her, despite claims now on her petition that she made two requests

to testify, which the court allegedly ignored. The defendant has offered no transcript of the hearing to verify her claims, and nothing in the record of prior court proceedings supports her position. The Superior Court denied this Motion by decision dated March 31, 1993. Thereafter, the court granted the Motions for Judgment filed by the plaintiff on April 30, 1993, providing for a sale of both premises on June 19, 1993.

Two days before this date, the defendant filed another bankruptcy petition. As the total debt owed by her greatly exceeded the value of her property, the Bankruptcy Court, on motion of the plaintiff, granted relief from the stay to allow plaintiff to proceed on its foreclosure actions, which relief was granted on July 20, 1993. No appeal was taken or action taken to obtain a further stay. Thereafter, the defendant voluntarily dismissed her bankruptcy case. (Copy of dismissal attached in Appendix). On August 2, 1993, the defendant filed a Motion to Vacate her voluntary dismissal, seeking to reargue the court's decision on the Motion for Relief from Stay. This was originally scheduled for argument on September 15, 1993, and was continued at the request of counsel for the defendant until October 6, 1993 in the Bankruptcy Court.

In the meantime, the Superior Court granted the Motion for Judgment of Strict Foreclosure as to each parcel filed by the plaintiff on August 16, 1993, providing for a law day for the defendant of September 14, 1993. At the time of those judgments, the total taxes owed to the plaintiff by the defendant on 2440 North Avenue totaled $112,067.88. The total owed as to the property at 2428 North Avenue was $20,859.60. The debt as to both properties was $132,927.48. In addition to the above amounts, the court previously had awarded to the

plaintiff attorney's fees and costs. The total value of the properties as found upon return of appraisal immediately prior to the scheduled sale in June 1993 is $103,000.00.

The defendant thereafter filed motions to open the judgment of strict foreclosure seeking to extend the law day to allow her to have argument in the Bankruptcy Court on her Motion to Vacate Dismissal. Her motions dated August 26, 1993 were denied by the court on September 9, 1993. The defendant filed an Appeal from this denial on September 13, 1993 to the Appellate Court of the State of Connecticut. On October 6, 1993 the Bankruptcy Court denied the Motion to Vacate Dismissal as filed by the defendant. It should be noted that the current total debt owed by the defendant, including continuing interest and court approved fees and costs, exceeds $180,000.00, as against a value of the two properties totaling $103,000.00. It should further be noted that the defendant, RONA FINIZIE, has merely a fractional interest in the property with her brothers. The tax obligations owed to the City of Bridgeport remain outstanding dating back to the List of October 1, 1976, as the defendant has refused to make payment on her taxes. The cases brought by the plaintiff have been pending since July 3, 1984.

On November 18, 1993, the court terminated the stay of execution on appeal, on motion of the plaintiff, and entered a new judgment of strict foreclosure. No appeal was taken from this judgment. The defendant thereafter sought review of the termination of stay, and although her motion was granted, the relief requested therein was denied, by order dated December 22, 1993. On January 5, 1994 the Appellate Court dismissed the appeal as moot, *suo moto*. The defendant's certification petition to the state Supreme Court was denied on February 24,

1994. *City of Bridgeport v. Finizie*, 228 Conn. 925 (1994). The Appellate Court on April 21, 1994 granted the defendant a further stay pending certification to the United States Supreme Court. The Appellate Court on July 28, 1994 granted the plaintiff's Motion for Order dated July 13, 1994, thereby terminating the stay it previously granted.

The defendant filed a petition for writ of certiorari to the United States Supreme Court on May 25, 1994 (the last possible day to do so), which petition was rejected by the Court. The defendant has refiled her petition on July 15, 1994, which petition once again was rejected by the Court.

## SUMMARY OF THE ARGUMENT

The United States Supreme Court should not grant a writ of certiorari to the petitioner, Rona V. Finizie, as she has not shown "special and important reasons therefor" as required by Rule 10.1 of the Rules of the Supreme Court of the United States.

The petitioner did not raise any federal claims at any stage of state court proceedings, and no court in the State of Connecticut has ruled on such claims.

Further, the petitioner has presented no evidence that the facts alleged in her "Questions Presented" are true; the scenario set forth by her has no basis in fact.

## ARGUMENT

Rule 10.1 of the Rules of the Supreme Court of the United States requires that a petitioner show "special and important reasons" for granting of a petition for a writ of certiorari. The petitioner, Rona V. Finizie, in the case at bar appears to rely on Rule 10.1(c) by claiming in her Questions Presented that the Connecticut courts violated her federal constitutional rights. However, a closer look at her claims confirms that they do not provide the basis for review by the United States Supreme Court.

The petitioner filed on appeal to the Appellate Court of the State of Connecticut on September 13, 1993, from a judgment of the Superior Court of the State of Connecticut dated September 9, 1993. Subsequent to that judgment, the court reopened the case and entered judgment on November 18, 1993. No appeal was taken by the defendant from this judgment. As the judgment upon which the defendant took an appeal was no longer a valid judgment, the Appellate Court of the State of Connecticut properly dismissed the appeal of the defendant as moot. See *Reynolds v. Vroom*, 130 Conn. 512, 36 A.2d 22 (1944). Further, the Amendments to the Preliminary Statement of Issues, raised by the Petitioner in her petition, included matters allegedly arising on January 4, 1993 and March 31, 1993. The time in which to appeal these matters had long expired, without appropriate appeal having been taken. Accordingly, the defendant could not in January 1994 raise issues decided commencing one year earlier. *First National Bank v. Ferguson*, 129 Conn. 374, 377, 28 A.2d 87 (1942).

It is well established that a petitioner to the United States Supreme Court on a writ of certiorari must show

that the federal claim was presented at the state court level. *Webb v. Webb*, 451 U.S. 493, 496 (1981), citing 28 USC §1257. The Court stated that when the highest state court has failed to pass on a federal question, "it will be assumed that the omission was due to want of proper presentation in the state court, unless the aggrieved party in this court can affirmatively show the contrary." *Id.*, 495. At no time has the petitioner raised on appeal, prior to the petition for writ of certiorari, any claim that her constitutional rights have been violated. As such, no court in Connecticut has decided any federal question which is subject to review at this time.

If the petitioner claims her rights were violated by actions of the court on her Motion to Reopen (Appendix B of her petition), she took no timely appeal of those actions. The one appeal she did file in 1993 became moot after the underlying judgment was reopened, and a new judgment entered without an appeal. The defendant showed no special or important reasons for granting of her petition for certiorari to the Connecticut Supreme Court, and it was properly denied.

The petitioner makes several uncorroborated statements in her petition. Two of such statements include her denial that she agreed to a stipulated judgment in March 1987 (petition at p.8), and her claim that the court denied her requests in 1993 to give testimony (petition at p.10). No proof of such statements exists. In fact, the petitioner was present at court in March 1987, with her counsel (see Appendix herein). Further, she did not offer testimony in 1993 despite an ability to do so. The petitioner's arguments cannot change the fact that she agreed to a judgment disposing of her real property in 1987 and has done everything in her power to prevent the judgment from being carried

out. There is no lack of due process, as claimed by the petitioner, as she has always had an opportunity to be heard in court at all times, having voluntarily chosen not to pursue her rights.

## CONCLUSION

The petitioner, Rona V. Finizie, has shown no "special and important reasons" for review by the United States Supreme Court on certiorari. At no time has she raised any federal questions for decision by the courts in the State of Connecticut. The factual claims made by her in claiming constitutional violations against her are unsupported. The petition should be denied.

THE RESPONDENT
BY GORDON & SCALO
Its Attorneys

/s/Ronald D. Japha

RONALD D. JAPHA
Its Attorney of Record
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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

## APPENDIX

# APPENDIX

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A. Transcript Excerpt of Judgment, March 25, 1987 in *City of Bridgeport v. Finizie,* Superior Court at Bridgeport, CT, Docket #217953/217952 ..... 1A

B. Application for Voluntary Dismissal filed by Rona V. Finizie as to 1993 bankruptcy ..... 6A

**State of Connecticut**
**Superior Court**

Judicial District of Fairfield at Bridgeport
March 25, 1987

* * * * * * * * * * * * * * * * * * * * *

CV217953/217952

CITY OF BRIDGEPORT

VS.

FINIZIE

* * * * * * * * * * * * * * * * * * * * *

BEFORE:

HON. MILTON J. HERMAN

APPEARANCES:

RONALD JAPHA, ESQ.
For the Plaintiff

BENSON SNAIDER, ESQ.
For the Defendant

JOEL GREEN, ESQ.
For the Defendant

(FILED
JAN 4 1993
SUPERIOR COURT
BRIDGEPORT)

Court Monitor

* * *

MR. JAPHA: If Your Honor please, what we have are two tax foreclosures, City of Bridgeport versus Finizie, docket 217952. That's as to a parcel at 2428 North Avenue. There's another file with the same name; the property, though, is 2440 North. This is docket 217953. I don't know which order Your Honor would take those.

We, in essence, have an agreement that we would want to propose to Your Honor as far as sale date, costs, attorney's fees. It would just be a matter of putting on the appraiser and the plaintiff to testify as to the debt and the valuation. But I don't know which order you want to do that.

THE COURT: It doesn't make any difference. Whichever order pleases you.

MR. JAPHA: Okay.

THE COURT: I just looked at the files five minutes ago. You people have lived with these files. You ought to know which is the better way to approach it.

MR. JAPHA: I understand. Perhaps if we could take the 2440 North Avenue, which is docket 217953. If I could call Mr. Calderaro.

* * *

* * * variance?

A: You'd have to go in for actually a change of zone to a garden apartment zone.

Q: Has that been done next door in the highrise apartment?

A: That's a residential apartment zone next door. That's different. It's much more difficult to obtain. The density is so much heavier that there tends to be more and more resistance. When those apartments were granted, zoning was an awful lot easier than it is today.

There seems to be a mass outpouring today of consumer advocacy and outpourings of people who are afraid of condominiums. But I would feel it's reasonably probable to get, out of the combined piece here, 20 units.

Q. You'd have to change it to what zone?

A: You'd have to go to the zoning board of appeals and change — I beg your pardon. The planning and zoning commission for a change of zone to a garden apartment zone or, barring that, go the zoning board of appeals for a variance of the Residence - A zone.

Q: Alright. Is there an abutting garden apartment zone there?

A: No. There's a residential apartment zone there.

MR. SNAIDER: I have nothing further.

THE COURT: You're all through?

MR. GREEN: I have no questions, Your Honor.

THE COURT: Do you have any questions in the back?

MS. RONA FINIZIE: No, Your Honor.

THE COURT: Okay. Thank you.

THE WITNESS: Thank you very much.

MR. JAPHA: No other witnesses, Your Honor.

I don't know if other counsel have any evidence they'd wish to offer. Otherwise, we'll propose a disposition.

THE COURT: Any witnesses?

MR. GREEN: I have none, Your Honor.

MR. SNAIDER: I have none, Your Honor.

We have a stipulation.

THE COURT: Alright. Let's go.

MR. JAPHA: If Your Honor please, we would ask that a sale — foreclosure by sale enter as to each matter with a sale date a year from the current date, I assume on the first available Saturday. I don't know if Your Honor has a calendar handy. I don't know if anyone else,

perhaps, has a 1988 calendar.

March 26, Your Honor.

MR. SNAIDER: Nineteen eighty-eight.

MR. JAPHA: At 12 noon on the premises. What we would ask is that the Court, at this point, either not appoint a committee or appoint one and the accompanying appraisers, but order them not to incur expenses until a certain date prior to the sales so as to give the defendants a chance to either sell the property on their own or somehow otherwise pay off the city. I don't know which Your Honor would want to do as far as either.

THE COURT: It doesn't make a bit of difference to me. Which ever is more convenient for you people. You're out in the boondocks out there. Tell me.

MR. SNAIDER: Well, Your Honor, we wanted to have no costs incurred for a period of ten months. And whether or not the committee and appraisers are appointed, we want to have no costs incurred by them for a period of ten months from today.

MR. JAPHA: Perhaps, Your Honor, if we could have a committee appointed and the appraisers and then order them not to incur expenses on or before January 16, Your Honor, 1988. That's assuming if payment is made in full to the city, then nothing will have to be done. Then should nothing have been done about the debt, at that point the committee that's appointed will order a sign and place advertising and incur any other expenses. I would assume advertising on the three prior Saturdays in the Bridgeport Post. I don't know if Your Honor would want some suggestions as to a committee, appraisers or if the Court would want to appoint them on their own.

THE COURT: You can make suggestions. I'm not sure that I would abide by your suggestion. But if you

have anybody in mind, give them to me.

If the payment is made before January 16, '78.

MR. JAPHA: Eighty-eight, Your Honor?

THE COURT: Eighty-eight, I'm sorry.

And the committee is discharged without further ado or expense, alright?

MR. JAPHA: That's correct, Your Honor.

THE COURT: Go ahead. You were going to say something?

MR. SNAIDER: Your Honor, as far as the committee, I would suggest that Attorney Bruce Dern be appointed the committee for the sale.

THE COURT: The reason why I'm deferring it — this is off the record.

(Off the record and return)

Bruce is fine with me, who I know.

Any other suggestions?

Okay. Do I have to find anything else? We'll give you notice as to who the committee is.

MR. JAPHA: Okay. And as to the appraisers, * * *

* * *

# United States Bankruptcy Court
# District of Connecticut

*In re: Rona V. Finizie*
*Debtor*

Case No. 93-52048 AHWS

Chapter 13

**Application for Voluntary Dismissal**

The above stated debtor, Rona V. Finizie hereby requests that the court dismiss her Chapter 13 petition without prejudice pursuant to 11 U.S.C. §1307(b) of the code. This petition has never been converted from any other Chapter under the Bankruptcy Code.

Dated July 2, 1993

The undersigned hereby certifies that service was made on the foregoing at:

Atty. Ronald D. Japha, 140 John Street, Bridgeport, CT 06604.

Clerk of the Bankruptcy Court, U.S. Bankruptcy Court, 915 Lafayette Blvd., Bridgeport, CT 06604.

Jeffrey L. Sapir, Esq., 399 Knollwood Road, Suite 102, White Plains, N.Y., 10603.

Office of the U.S. Trustee, 105 Court Street, Suite 402, New Haven, CT 06511.

Dated July 23, 1993.

/s/ Bradford J. Chaucer
Bradford J. Chaucer

The Debtor,
Rona V. Finizie

By /s/ Bradford J. Chaucer
Bradford J. Chaucer
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139 Orange Street
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